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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,185	03/28/2002	Wayne J. Myer	70254-346	4762
20915	7590	08/26/2005	EXAMINER	
MCGARRY BAIR PC 171 MONROE AVENUE, N.W. SUITE 600 GRAND RAPIDS, MI 49503			LUK, EMMANUEL S	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/063,185	MYER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Emmanuel S. Luk	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 13 July 2005.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-64 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 1-64 is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) 11-13,23,24,32,33,41,42,51,52 and 61-64 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: .

**DETAILED ACTION**

1. Claims 11-13, 23, 24, 32, 33, 41, 42, 51, 52, and 61-64 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claims fail to further limit the parent claims since they are intended use of the apparatus in terms of line speed of the material. The claims do not further limit the parent claims of the claimed structure and should be canceled.

***Allowable Subject Matter***

2. Claims 1-64 are allowed.

3. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach an extruder die with annular die opening and choke ring positioned relative to the extruder such that the annular die opening is received within the choke ring opening.

The line speed is an intended use and does not provide structural limitation to the apparatus. The polymeric resin and blowing agent in the preamble of the claim is an intended use of the apparatus and does not provide structural limitation. The same structure can be used at different speeds and for different materials as desired by the user. The intended use limitation of the apparatus does not give weight to the claimed structure.

The double patenting rejection for the claims by U.S. patent number 6,428,297 have been withdrawn due to the submittal of the terminal disclaimer.

### **Response to Arguments**

4. Applicant's arguments filed 7/13/05 have been fully considered but they are not persuasive. The applicant's arguments have been considered, however, the line speed itself is not a structural limitation of an apparatus, it is an intended use and does and the apparatus is capable of operating at that speed. The claim has no structure that can define the apparatus of producing the line speed. Defining the configuration of the gap is a structural limitation with an intended use of the line speed does not further limit the claim and does lend weight to the claimed structure.

The argument of the functionality between Beckwith and the applicant's invention is noted, however, the structural limitations of the apparatus are the issue of the rejection and not the use of the apparatus.

### **Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel S. Luk whose telephone number is (571) 272-1134. The examiner can normally be reached on Monday-Thursday 8 to 5 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Davis can be reached on (571) 272-1129. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EL

DUANE SMITH  
PRIMARY EXAMINER

  
8-2205